

Meeting Minutes September 16, 2004

Town of Los Altos Hills City Council Regular Meeting

Thursday, September 16, 2004 6:00 P.M.

Bullis School Multi-Purpose Room, 25890 Fremont Road

1. CALL TO ORDER, ROLL CALL, AND PLEDGE OF ALLEGIANCE

Mayor O'Malley called the Regular Meeting of the City Council to order at 6:00 p.m. in the Bullis School Multi-Purpose Room at Town Hall Temporary Offices.

Present: Mayor Mike O'Malley, Mayor Pro Tem Breene Kerr, Councilmember Emily Cheng, Councilmember Bob Fenwick, and Councilmember Dean Warshawsky

Absent: None

Staff: City Manager Maureen Cassingham, City Attorney Steve Mattas, Planning Director Carl Cahill, Acting City Engineer/Director of Public Works Dave Ross and City Clerk Karen Jost

MOTION SECONDED AND CARRIED: Moved by Warshawsky, seconded by Fenwick and passed unanimously to limit the length of time for public comments to three minutes.

2. APPOINTMENTS AND PRESENTATIONS

- 2.1 Certificates of Appreciation – Roy Rogers, Finance and Investment Committee; Jorge Fernandez and Charlene Geers, Pathways Committee; Stacey Ahrens, Public Education Committee

Mayor O'Malley announced that the City Council was awarding Certificates of Appreciation to Standing Committee members Roy Rogers, Finance and Investment Committee and Charlene Geers, Pathways Committee. The recipients had recently completed their four year terms of service on their respective Town Standing Committees. Council also awarded Certificates of Appreciation to Jorge Fernandez, Pathways Committee and Stacey Ahrens, Public Education Committee who had recently tendered their resignations.

- 2.2 Appointment(s) to the Community Relations Committee – 5 vacancies

Council had before them for their consideration applications from the following candidates: Roger Burnell, Ron Knapp, Duffy Price, Patricia B. Woolsey and Roy Woolsey. Burnell, Price, P. Woolsey and R. Woolsey were seeking reappointment to the Committee.

MOTION SECONDED AND CARRIED: Moved by Fenwick, seconded by Cheng and passed unanimously to appoint Roger Burnell, Ron Knapp, Duffy Price, Patricia B. Woolsey and Roy Woolsey to the Community Relations Committee for terms of four years.

Community Relations Committee Chair Roy Woolsey spoke to the Council and described the Committee's chartered tasks that included: the publication of the Town Newsletter, Town Picnic and Newcomer's Welcoming Reception. He outlined his vision for the future of the Committee. Woolsey noted that the Committee is receptive and welcomes ideas for new projects for the community. He reported that at their next meeting, they would be reviewing the option of Associate Memberships for Town Committees. This will provide additional opportunities for residents to work with the Committees on Town projects and special events.

2.3 Appointment(s) to the Environmental Design and Protection Committee-
4 vacancies

Council had before them for their consideration an application from Robin Robinson, current Co-Chairman of the Environmental Design and Protection Committee, for reappointment to the Committee.

MOTION SECONDED AND CARRIED: Moved by Warshawsky, seconded by Kerr and passed unanimously to appoint Robin Robinson to the Environmental Design and Protection Committee for a term of four years.

2.4 Appointment(s) to the Finance and Investment Committee – 6 vacancies

Council had before them for their consideration applications from Wilfred Corrigan, Frank B. Lloyd and Lalla Stark for reappointment to the Finance and Investment Committee.

MOTION SECONDED AND CARRIED: Moved by Fenwick, seconded by Warshawsky and passed unanimously to appoint Wilfred Corrigan, Frank B. Lloyd and Lalla Stark to the Finance and Investment Committee for terms of four years.

Frank Lloyd addressed Council and suggested that they give thought to candidates they might suggest for membership to the Committee noting the special qualifications and finance requirements that are required for appointment.

2.5 Appointment(s) to the Pathways Committee – 3 vacancies

Council had before them for their consideration applications from the following candidates: Jean Danver, Nick Dunckel, Ann Duwe, Les Earnest, Robert Stutz and Jolon Wagner. Stutz was seeking reappointment to the Committee.

Council briefly interviewed those candidates present.

Following a ballot vote, the following were appointed to the Pathways Committee for terms of four years: Nick Dunckel, Jolon Wagner and Robert Stutz.

3. PLANNING COMMISSION REPORT

Planning Director Carl Cahill reported that the Planning Commission had not met since the last Council meeting. For clarification, he reported that the Planning Commission would be considering the zoning amendments and General Plan amendments with regards to public and private schools at their first meeting in October.

4. CONSENT CALENDAR

Items Removed: 4.1 (Fenwick), 4.3 (Kerr)

MOTION SECONDED AND CARRIED: Moved by Warshawsky, seconded by Cheng and passed unanimously, to approve the remainder of the consent calendar, specifically

- 4.2 Review of Disbursements: 08/11/2004 – 09/08/2004 \$463,028.83
- 4.4 Acceptance of Grant of Pathway Easement: Lands of Davis, 11510 Summit Wood Road – Reso #56-04
- 4.5 Approval of Proposed Resolution Supporting Proposition 1A-“Protection of Local Government Revenues” – Reso #57-04
- 4.6 Approval of Payment of Invoices Associated with Relocation of Town Hall as Budgeted in the New Town Hall Project –Reso #58-04
- 4.7 Approval of Proposed Joint Funding Agreement Amendment 2 – Silicon Valley Regional Interoperability Project

Items Removed:

- 4.1 Approval of Minutes: Regular City Council Meeting August 19, 2004

Councilmember Fenwick noted that text had dropped off the first paragraph on page 2 of the meeting minutes. The City Clerk read into the record the omitted language.

MOTION SECONDED AND CARRIED: Moved by O'Malley, seconded by Fenwick and passed unanimously to approve the City Council Meeting minutes for August 19, 2004 as amended with the addition of the following language to the beginning of the first paragraph on page two: “Applicant Susan Welch addressed Council. She expressed her desire and interest to work with the Open Space Committee to preserve and manage the Town’s open space areas...”

- 4.3 Approval of a Proposed Fourth Extension of Cable Franchise Agreement Between the Town of Los Altos Hills and Comcast

Councilmember Kerr requested an update on the negotiations with Comcast.

City Manager Cassingham explained that there had been a delay in the negotiations while awaiting the Town's cablecast studio equipment list for the new Town Hall. This has now been delivered to Comcast. The key issues being negotiated are universal service terms and public access channels. Cassingham explained that Comcast would be approaching the Council with regard to their new build project for service to the 384 homes unserved by cable as part of the universal service franchise terms. This is tentatively scheduled for the October 7, 2004 Council meeting.

Council requested the City Manager convey to Comcast that they strongly urge the completion of the franchise negotiations by conclusion of the fourth extension, December 19, 2004.

MOTION SECONDED AND CARRIED: Moved by Kerr, seconded by Warshawsky and passed unanimously to approve the extension of the current cable franchise agreement between the Town of Los Altos Hills and Comcast from September 20, 2004 to December 19, 2004.

5. UNFINISHED BUSINESS

5.1 Town Goals

5.1.1 Complete Town Hall On Time and On Budget

5.1.1a TBI Update

Tony Vierra, TBI Construction Management, reported that a milestone for the construction of the new Town Hall had been reached with the pouring of the concrete slab today. He thanked the New Town Hall committee members for their efforts during this phase of construction noting that Al Whaley and John Harpotlian had helped to ensure that the appropriate number of openings for conduits had been included in the slab. Vierra reported that they are continuing value engineering on the electrical system and they are on target for the scheduled completion date of March 15, 2005.

5.1.1 Identify and Fund Underground Project

5.1.2a Undergrounding Subcommittee Proposed Project

Councilmember Warshawsky presented a brief overview of the Town's Undergrounding Project. He reiterated that the ten earlier identified streets proposed for the project had been narrowed to three and included: Fremont near Bullis, Altamont near Byrne Preserve, and Purissima at the Little League fields. The Subcommittee had walked the three streets with representatives from PG&E. PG&E had selected Purissima as their primary candidate for the project. The criteria the street needed to meet were high traffic, high clutter, high civic/scenic value and few overhead drops. Warshawsky explained that it would be necessary to choose a trenching agent before PG&E will accept the application into the system. He will return to Council in late October with a status report.

5.1.2 Complete Master Pathway Map

Discussed as Agenda Item 9.2

6. NEW BUSINESS

6.1 Request for Support of Encroachment Permit Application to Caltrans for Edward Radlo's Existing Amateur Radio Antennas

City Manager Maureen Cassingham introduced this item to Council. She explained that Edward Radlo, Town resident and member of the Town's Emergency Communications Committee, was requesting support for his encroachment permit application to Caltrans to allow his two existing amateur radio antennas to remain in the Caltrans Highway 280 right-of-way. Staff recommended approval of the request, noting the extent of public benefit from the antennas and their assistance with the Town's emergency communications. Cassingham added that the Emergency Communications Committee at their September 7, 2004 meeting passed a resolution in support of Radlo's request and recommended Council adopt a similar resolution. Pictures of the antennas and the application were included as attachments in the staff report to Council.

Edward Radlo, addressed Council. He thanked the City Manager for her presentation of his request and offered to answer Council questions. He noted that the antennas have been informally accepted by Caltrans and located in the Highway 280 right-of-way for the past seven (7) years. Caltrans has now requested a formal permit be processed and have indicated that support from the Town would be favorable to the application.

Mayor O'Malley thanked Radlo for his service to the Town and efforts with the Town's emergency communications.

MOTION SECONDED AND CARRIED: Moved by Cheng , seconded by Warshawsky and passed unanimously to approve and adopt Resolution #59-04 supporting the encroachment permit application of Edward Radlo to Caltrans for existing Radio antennas.

6.2 Proposed Amendment and Extension of Law Enforcement Services Contract with Santa Clara County

City Manager Cassingham introduced this item to Council. She explained that the County had approached its contract cities with a proposed amended and extended agreement which would allow them to recover their costs for: 1) the increase in PERS retirement costs, and 2) the expense for relocation of the substation. Cassingham noted that the PERS package keeps the County competitive with other law enforcement agencies in the Bay Area and the new facility will address the overcrowded and substandard present quarters. The additional cost to the Town for FY 03-04 was \$40,565 for law enforcement services and included the Town's pro-rata share of the new facility which is \$10,401. Cassingham explained that the agreement evokes a number of caps with relationship to personnel costs and other controllable costs of operating the new substation. She added that the contract eliminates the cost of the Town's share of the DARE officers.

Cassingham concluded that the County had provided excellent quality law enforcement services for the Town. Their service is cost effective and she had received very few

complaints from the residents on the service. She offered that while there are service options with other agencies, given the competitive price of the contract and the quality of service, she recommended the Council give consideration to the revised contract.

Mayor O'Malley concurred that he never hears any complaints or issues about the Sheriff's services.

MOTION SECONDED AND CARRIED: Moved by Fenwick, seconded by Warshawsky and unanimously approved to adopt Resolution #60-04 and authorize the City Manager to enter into an Agreement with the County of Santa Clara for Law Enforcement Services.

6.3 Discussion of Water Conservation and Landscape Requirements

Planning Director Carl Cahill introduced this item. He explained that the City Council had requested discussion of the Planning Commission report on water conservation at their last meeting. The Planning Commission, following review and discussion of the report, had directed staff to revise the current landscaping materials distributed by the Town to better focus on water conservation. They did not recommend the drafting of any ordinances that would restrict the size of lawns or require submittal of plans that would show the amount of water required for maintenance of the landscaping. It was determined that the Town did not have the resources or staffing to enforce such a program.

OPENED PUBLIC COMMENT

Jan Fenwick, Purissima Hills Water District Board Member, explained the Board had discussed numerous mechanisms for restricting water for landscaping use. They have prepared an educational brochure that is sent to all applicants. The pamphlet suggests landscaping designs that would be divided into thirds with low, moderate and high water usage. This mirrors the Hillsborough Ordinance. Unfortunately, water usage for landscaping had continued to escalate despite the District's efforts. She noted that they would like to do something more proactive, possibly partnered with the Town and suggested a requirement for new landscaping to include a calculation of water needs once the landscaping was established. A meeting with the applicant and Water District to discuss proposed irrigation systems and potential water costs was another suggestion.

Mayor Pro Tem Kerr asked if the concept of incentives had been studied by the District. He questioned if the District would be interested in a partnership with the Town to solve water use at the Little League fields as a demonstration project. Kerr added that the Council had limited authority to affect water behavior.

Ernest Solomon, Purissima Hills Water District Board Member, explained that the District's primary concern was the issue of water supply. He noted that they have used programs of pricing and education as consumption deterrents.

Councilmember Cheng commented that it was a very small percentage of residents who use the majority of water and felt it was unfair to penalize the rest of the community. She suggested everyone learn to be vigilant with their water and turn off their sprinklers

during the cool months. She added that she is cautious with her water. Cheng is served by the California Water Service Company.

Solomon agreed that a very small percentage of residents are heavy water users. Fenwick added that it is primarily the landscaping for new homes.

Mayor O'Malley offered that lawns were the primary landscaping problem and he could see the new Council investigating limiting the amount of lawn coverage on a property.

Fenwick thought this was a positive suggestion to the problem. She explained that the District's consultants had just completed a Water Supply Master Plan and are presently developing a Water Conservation Plan.

Councilmember Fenwick suggested that the District consider publication of the names of the top users, noting that social pressure might be a deterrent.

OPENED PUBLIC COMMENT

Peter Evans, La Loma Drive, offered that the use of additives in the water are turning rubber plumbing parts to goo and in the future will present a real water conservation problem from damaged plumbing.

Jean Mordo, Vogue Court, explained that he believed the City Council should take a leadership role in water conservation. He offered that it was not a problem now but a drought could be a problem in the future. Mordo suggested that a similar approach to the Town's building restrictions that use MDA/MFA be considered for water restriction. He added that there should be a higher cost and possible penalty with a water quota and concurred with the Mayor that it would be a good idea to restrict the amount of lawn coverage.

Jim Abraham, Viscaino, commented that he believed it would be difficult for the Town staff to monitor and regulate lawns and water consumption at a home. He suggested a very expensive fifth tier be added to water customers.

CLOSED PUBLIC COMMENT

Planning Director Cahill explained that it is easy for the Town to regulate building or illegal structures but it would be almost impossible for the Town to prevent residents from planting lawns after they have finalled their building projects.

7. REPORTS FROM COMMITTEES, SUB-COMMITTEES, AND COUNCILMEMBERS ON OUTSIDE AGENCIES

Councilmember Fenwick reported he had attended an Emergency Communications Committee meeting.

Councilmember Warshawsky reported that he had attended an Open Space meeting that had included representatives from the Town, Portola Valley, Woodside and Palo Alto. It

was an excellent opportunity for dialogue on managing open space with neighboring communities.

Mayor O'Malley reported that he had toured Santa Clara Valley Water District projects. He noted that SCVWD now offers the Adobe Creek Reach 5 Collaborative Effort as a model to other communities. He applauded the community members who had worked on the project for their efforts and great success.

Councilmember Cheng reported that she had attended the Library JPA meeting. They agreed to close all libraries in Santa Clara County every Monday and hope this will be an incentive to residents to support their libraries and pass the much needed bond measure.

8. STAFF REPORTS

8.1 City Manager

City Manager Cassingham reported that Bill Madison with Jones Hall, had confirmed the lease financing for the new Town Hall had closed this morning and the funds have been wired. The financial document binders are expected next week.

City Engineer Dave Ross reported that in response to inquiries regarding parking on Rhus Ridge, he and the Planning Director had visited the site. Logs will be placed to better delineate the parking area. He suggested that staff meet with the Open Space and Pathways Committee members to get input on the area and report back to Council.

8.2 City Attorney

8.3 City Clerk

8.3.1 Report on Council Correspondence

9. COUNCIL-INITIATED ITEMS

9.1 Consideration of Request from Pathways Committee for Legal Opinions from City Attorney – Councilmember Warshawsky

Councilmember Warshawsky explained that as Council Liaison to the Committee, he requested this item be on the agenda for Council consideration. He deferred to the City Attorney for comment.

City Attorney Mattas explained that if the City Council wished to direct Staff to review the questions forwarded from the Pathways Committee regarding: 1) the proposed inconsistency in the Municipal Code on the subject of the definition of public roads; and 2) correspondence from an attorney representing a resident in Town that had alleged that a pathway easement is not valid on a private road, he would be happy to review the questions and report to the City Council.

Council concurred that the City Attorney could review the questions and report back his findings to Council.

Mattas explained that in response to a third question from Chris Vargas, Pathways Committee Chair, regarding public comment at their upcoming future work sessions, he could respond tonight and advise him that it would not be required to take comments during their deliberations on each recommendation. It is required that the public have the opportunity to speak at the public meeting during public comment on the agenda but the meeting can be structured to meet the needs of the Committee. Mattas noted that the map would be presented at a public hearing before the Planning Commission and before the City Council before it's adoption.

9.2 Discussion of Schedule of September Joint Planning Commission and
Pathways Committee Public Information Meetings for 2004 Master Path Map
Update – Councilmember Warshawsky

Councilmember Warshawsky introduced this item to Council. He reported that the Pathways Committee had held their three public information meetings. The response from the residents had been positive. Warshawsky noted that the Committee was now seeking direction from the City Council regarding the next phase of the project. They have requested additional time to consider and review resident input and the scheduling of future public meetings. Warshawsky added that it was his recommendation that the Committee spend the next several months digesting and reviewing the public comments and schedule any future hearings for late 2004 or early 2005. He explained that this would be the least disruptive and inconvenient for the Town's residents that have attended numerous meetings over the last three years and would provide time for the Committee to complete their work.

Mayor Pro Tem Kerr concurred with Warshawsky's recommendation, adding that it would be appropriate for the new City Council, when it is seated in November, to review and finalize the map.

Ginger Summit, Pathways Committee Vice Chair, summarized the recent public meetings for Council. She noted that they had been well attended and very civil. Every person who spoke at the meetings or had sent correspondence to the Committee had been acknowledged with a written response. The Committee is working diligently to build an effective and positive pathways system and they do not want to rush the process. The Committee would like to hold four additional working sessions each preceded by a Saturday morning walk. Residents who have concerns about specific paths that would be reviewed would be invited to join the Committee on the walk.

Councilmember Cheng thanked Summit for all of the work that the Committee had undertaken on the map and congratulated them on their excellent meetings.

Mayor O'Malley commented that he had attended a Pathways Meeting and applauded the Committee on the tone and tenor of the sessions.

OPENED PUBLIC COMMENT

Colette Cranston, W. Fremont Road, noted that she had attended the meetings and felt it was important to communicate to the public why the process is being delayed. She suggested a newspaper article might be appropriate.

Eric Clow, Planning Commissioner, suggested that it would be helpful to have a topo map projected on the pathways map. This would provide a better understanding of the steepness of the paths.

CLOSED PUBLIC COMMENT

Council discussed a Town-wide notice of meeting cancellation deeming that it was important to alert the residents to the cancellation. Staff was directed to work with Pathways Committee Vice Chair Ginger Summit to incorporate language from the Committee's acknowledgement letter into the notice of cancellation that would be sent out tomorrow, September 17, 2004.

9.3 Discussion of Staff Changes(s) to Public Education Committee Report – “Public Education in Los Altos Hills: A Brief History” – Mayor Pro Tem Kerr

Mayor Pro Tem Kerr explained that he had requested Council discussion of this item because the PEC had requested further consideration of their final document.

Kathleen Justice-Moore, Public Education Committee, explained that the document before Council dated September 1, 2004 and titled “A History of Public Education in Los Altos Hills” had incorporated all of the staff changes. The title had been changed from the earlier version. The Committee requested reconsideration of the language that had been removed regarding the “got milked” campaign and the cows in Town. Justice-Moore explained she had also used City Council meeting minutes as a foot noted reference to quotes that were added to the document stating: “The formation of a Bullis School Foundation along with financial assistance from [LASD] and the Town was mentioned as possible funding solutions.”

City Attorney Steve Mattas commented that staff did not have an objection to the addition of the quote from Council meeting minutes. He explained his recommendation on the exclusion of the “got milked” campaign. Mattas noted that it was his opinion that the item was inappropriate for a Town publication funded by public monies due to its political nature as an expression of a political opinion.

Justice-Moore requested additional clarification from Mattas. She questioned if the paragraph could be drafted to be more descriptive. Mattas explained that it was his opinion and advice to Council that the cows represent an expression of a political position and therefore maintain a political aspect and should not be included in a document that is suppose to be factual.

Council briefly discussed the language of the paragraph and directed the PEC to revise the language by deleting the text referencing financial inequities. The statement should read: “The closure of Bullis is the origin of a private citizens’ campaign carrying the slogan “Got Milked?” The mascot for this campaign is a cow which explains why there are hand-painted wooden cows posted on private property of several LAH residents.

Justice-Moore described the additional minor changes that were administrative. Kerr questioned the title change and offered that the acronym footer not be included in the final report. Justice-Moore concurred.

Mattas described to Council their exposure if they chose to publish the item. He explained the ramifications, if the item was determined to be political, as they occurred in the court case he had referenced for excluding the paragraph. They included redaction and efforts to hold an employee personally accountable for the illegal expenditures.

PASSED BY COUNCIL CONSENSUS: To approve the document dated September 1, 2004 titled “A History of Public Education in Los Altos Hills” with the modified paragraph.

9.4 Discussion of Los Altos School District Proposed Pre-School Lease of Bullis-Purissima Elementary School Facilities-Mayor Pro Tem Kerr

Agenda item 9.4 was reordered to accommodate audience comments

Mayor Pro Tem Kerr explained that he had requested the agenda item for Council discussion because of a brief statement that had been made when the School District reported out of Closed Session. The District directed staff to enter into serious negotiations regarding leasing a portion of the Bullis site to a commercial day care school. Subsequently, more has been learned from newspaper articles and statements by the Superintendent regarding the negotiations and it has become a more pressing issue. Kerr explained that it had been reported that they are entering into three separate lease agreements with terms of ten months. Kerr added that one of the lessees had a history of being a difficult tenant to extricate from leased premises. He added that he believed the action by the School District could be in violation of the Town’s zoning ordinance and one, if taken to fruition, the Town would have to live with for years.

Mayor O’Malley explained that the urgent nature of this discussion had developed very quickly with the public announcement by the School District that they had plans to lease the site to a day care center that could be in conflict with the Town’s zoning laws.

City Attorney Steve Mattas explained for background purposes, staff does not have all of the information on what has transpired at the School District. He noted that the Town’s General Plan and Zoning Ordinances, absent an amendment, did not permit this type of day care facility to operate in Town. If the proposed facilities were subject to the Town’s zoning requirements, they would be required to submit an application to amend the zoning and general plan requirements and it would require a discretionary action by the Council to approve the request. It appears through public statements made by the district that they do not believe the Town’s zoning requirements apply to this use. Staff has not received any documentation from the district to support this conclusion. Mattas referred to provisions of the Education Code that allow school districts to lease unused rooms when the facility is being used for the purposes of offering public education. Mattas explained the prerequisites that are required to make this provision applicable, including that the site must be offered first to other educational uses and they must receive fair market value for the property. To date, staff has not received any information that

indicated that these steps had been accomplished. Mattas noted that absent this information and compliance with the provisions, it would be staff's position that this purported use of the premises would be subject to the Town's zoning regulations.

OPENED PUBLIC COMMENTS

Craig Jones, resident, Chairman Bullis Charter School Board, and father of two elementary school age children addressed Council. He explained that his comments on this issue would be as a father. He thanked the City Council for their efforts and support to return public education to Los Altos Hills. Jones presented a brief overview of the School District's actions that closed the last public education school in Los Altos Hills. He noted that in his opinion there was no nexus between their plans to operate a commercial school and public education nor any financial benefit since the Bullis Charter School had offered more money than the commercial tenants.

Stacey Ahrens, West Sunset Drive, Bullis Charter School Board member, thanked the City Council for recognizing the urgency of the issue and concern the residents have over the lease of the school site to commercial tenants. She expressed her belief that the Los Altos School District had not acted in good faith and the Town residents were the recipients of their fiscal mismanagement that caused the closure of Bullis School. Ahrens added that it was her belief that the use of the school site for commercial facilities was in violation of the Town's zoning laws and urged the Council to not delay in taking action that could potentially make it difficult to remove the tenants from the site.

Karla Jurvetson, resident, thanked the City Council for their support of returning public education to Los Altos Hills. She reiterated the points expressed by the previous speakers that the leasing of the Bullis School site to commercial enterprises was in clear violation of the Town's zoning codes. She urged the Council to prevent the occupation of the site by commercial day care providers.

Peter Evans, La Loma Drive, offered into the record a written statement titled "Statement of Peter Evans regarding Los Altos School District's stated intent to lease classrooms at the Bullis Elementary School Campus for fee-based commercial preschool/day care." Evans expressed his view that the Town must take a stand to defend its ordinances and its authority.

Nancy Kellum, Esperanza, Public Education Committee, explained that it was her opinion that school funding motivates school districts to alienate school age children. She offered the rise in private school attendance and the disinterest of school districts to have these children return to public schools.

Alexander Atkins, Orchard Hill, offered a parable to the Council to describe the recent "battles" with the Los Altos School District noting the similarities of King Arthur and the righteous nobles and the evil warlords. He conveyed his belief that the Founders of the Town had sought to protect the Town's quiet and rural environment, independence, and autonomy and urged the Council to take action to prevent the school site from being used as a commercial venue.

John Swan, Public Education Committee, expressed his frustration that the Los Altos School District had always offered that the closure of Bullis School was a financial decision, however, this was no longer a valid reason. Leasing the site to Bullis Charter School would have resulted in a total cost savings of \$300,000 to the district. He noted that funds had been collected by the private sector for a possible legal action to thwart the leasing of the site to a commercial facility and asked the Council to consider publicly supporting their efforts.

Vera Elson, Miranda Drive, explained that her family had moved to Los Altos Hills with the expectation that their children would be able to walk to school. Unfortunately, the school has since been closed. They are avid supporters of the Charter School and are pleased with the positive energy and terrific teachers at the School. She encouraged the Council to take action to prevent the site from being leased and suggested they issue a public statement that this was in violation of the Town's zoning laws. She recommended that a possible venue for releasing the statement was the print media.

Steve Kirsch, La Paloma, explained that he was the parent of Charter School students and was pleased that he had made the decision to enroll his children at the school when he saw how vindictive the Los Altos School District had been to the Charter School with their many attempts to block the school's formation, locating them at Egan Junior High and providing them with school equipment that had been marked for disposal. He encouraged the Council to oppose the leasing of the site by the district.

Sue Sullivan, Campo Vista, noted that the Town's General Plan states repeatedly that the Town was incorporated as a rural, residential community with a minimum of institutions. The institutions are to be permitted to serve the residents. It does not allow for commercial businesses.

Eric Clow, Central Drive, Planning Commissioner, explained that he had addressed the Los Altos School District Board, and offered that the Town might require a Conditional Use Permit or General Plan amendment to any potential lessee of the site. He added that he believed it was appropriate for the Town to write an official letter and explain to the prospective lessees the Town's requirements.

Peter Mork, Campo Vista Lane, expressed his support of the previous speakers comments and encouraged immediate action by the Council to put the District on notice. He questioned whether the Town should be taking the issue to the State.

Jill Jensen, Public Education Committee, offered that she had spoken with one of the prospective lessees and had been informed by her that her attorney had received the lease agreement for the site. Jensen inquired if there was any clause in the document that explained they would need approval from the Town and was told there was not. Jensen explained that this would be a requirement.

Jolon Wagner, Robleda Court, explained that she no longer had school age children but sympathized with the parents and wished the school would reopen for their benefit. She questioned if the Town could legally withdraw their property tax base from the School District.

Roger Burnell, Public Education Committee, briefly summarized his past requests to the City Council on this subject. Burnell urged the Council to proceed with the letter and to take all legal steps as advised by the City Attorney to preempt the leasing of the Bullis site by LASD. He noted that it was imperative that the site be preserved for all options to return public education to LAH not just exclusively the Charter School.

Linda Swan, Burke Road, supported the opinion that previous speakers had expressed and stated that she wanted Bullis School back in LAH. She encouraged that Council to change the tenor of the letter to LASD and firmly explain the zoning requirements.

Bob Kamangar, Snell Lane, expressed his opinion that silence from the Council on this issue would potentially lead to lengthy legal battles. He noted his surprise on the misinformation that the residents of Los Altos had received on the Charter School. Kamangar commented that it was the right of the children of Los Altos Hills to have a public school in Town and urged the Council to take a strong stand on the issue.

CLOSED PUBLIC COMMENTS

Councilmember Warshawsky explained that he sympathized with the residents of the community and hoped to be able to enroll his son some day in a Los Altos Hills public school. He felt it was important to listen to the City Attorney on what applicable legal options the Council had to prevent the occupancy.

Councilmember Cheng commented that her heart was with the residents. She read a paragraph from a legal opinion that had been generated by the City Attorney to Council on the lease of the Bullis site: "The School District, therefore, cannot lease the surplus property for non education related activities, free of local zoning ordinances, without first giving priority to the charter school. Based on the information we now know, it would appear that the District has failed to comply with the limited exemption provided by Education Code section 17533. Therefore, the preschools would have to obtain a conditional use permit as required by the Town's land use regulations." Cheng added that she was confident, based on the City Attorney's advice, that Council could send a letter to the School District and advise them that the lease would be in violation of the Town's zoning.

Councilmember Fenwick explained that he understood the public comments tonight and the emotions evoked by the speakers calling for immediate Council action but noted that even a unanimous action by the Council tonight might not bring about a simple resolution to the issue. He explained that this was a legal issue with many variables.

Mayor Pro Tem Kerr explained that he had received numerous emails with a universal theme calling for Council action. Kerr added that to date, the Council had been hesitant to challenge the District to oppose their plans and had acted respectful of their rights as trustee's of the site but he believed that with their recent actions to lease the site for commercial use they had over stepped their authority and were not complying with the spirit of the Town's laws. He explained that it was important to understand this was not about the Charter School and their issues with the School District for the site, but it was about preserving Bullis for public education options. Kerr maintained that the site is important to the community and is designated in the Town's General Plan for public

education. The proposal by LASD to rent it for commercial use is counter to the Town's zoning laws and General Plan and it was important for the Town to assert its right as a municipality.

Mayor O'Malley explained that it was the role of the Council as elected officials to be dispassionate and to attempt to make the best financial and business decisions for the Town but it had come to the point that it was now very appropriate for Council action. He expressed the frustrations and challenges that the Town had encountered to communicate with the District and their numerous rejections and rebuffs. O'Malley explained that the Council had been reluctant previously to challenge the District but with their recent announcements in the press to lease the site to a commercial day care center, it was proper for Council to direct the City Attorney to draft a letter giving the District a specific period of time to respond and expressing that the proposed leasing of the site was illegal and if they continue with the proposed leasing without giving the Town their legal basis for their action to lease, that the Town will go to the next legal step.

O'Malley requested direction from the City Attorney on the appropriate action for Council in the event the District did not respond given that the next Council meeting is scheduled for October 7, 2004.

City Attorney Steve Mattas clarified for the Council and members of the audience that the statement Councilmember Cheng had read into the record was from a confidential-privileged attorney client communication. He explained that the sentence that was referenced stated that a conditional use permit would be required, it would also require a zoning amendment and potentially a General Plan amendment to make that use permissible.

Mattas outlined the steps that could be taken by the Council. First, Staff could be directed to immediately write a notice to the School District, copied to the tenants identified from the publications, identifying that the Town believes they need to comply with the Town's zoning ordinances and explain the requirements and request their legal basis if they believe that they do not have to comply. He suggested a reasonably short period to respond given the potential for the reported October occupancy of the site. Mattas added that he would recommend direction to Staff to request a copy of any leases that have been prepared and if necessary, to file a public record's request to see if any additional immediate action is necessary.

Mattas explained that if Council considered offering any further direction that might include a legal challenge to enforce the Town's zoning ordinances if the District does not respond to the notice or the Town disagrees with their legal basis for the lease, Council should consider adding an agenda item for the purpose of discussion. Mattas explained that it would be appropriate to add the item given that the next scheduled Council meeting is October 7th and that information had just recently come to the attention of the Council including that garnered through publications today regarding the potential occupancy of the site and the statement that the District did not have to comply with the Town's zoning requirements.

MOTION SECONDED AND CARRIED: Moved by Kerr, seconded by Cheng and passed by the following roll call vote to add to the agenda discussion of Council

consideration to authorize staff and the City Attorney's office to take the appropriate legal action to enforce the Town's zoning ordinances.

AYES: Mayor O'Malley, Mayor Pro Tem Kerr, Councilmember Cheng,
Councilmember Fenwick and Councilmember Warshawsky
NOES: None
ABSENT: None
ABSTAIN: None

Council briefly discussed the letter, time of response from the District and copying the individual tenants. Mattas explained it was his opinion copying the companies would not jeopardize the contracts because they had been publicly identified and it would be prudent for Council to copy them to advise them of the Town's concerns. Council deemed seven days was a fair and reasonable time frame to request a response from the District.

MOTION SECONDED AND CARRIED: Moved by Kerr, seconded by Cheng and passed by the following roll call vote to direct the City Attorney to prepare and deliver a letter expressing the Town's position that the District does not have the authority to enter into the leases and that this use is not permitted under the Town's zoning ordinances and that any occupancy would be inconsistent with the Town's zoning and would be illegal and improper. The letter would request the District respond within seven days and that they provide a rationale as to why they believe they have the legal authority to operate without complying with the Town's zoning ordinances. The letter is to be copied to the lessees. The City Attorney is also directed to make a formal public records request for copies of the lease agreements (contracts), draft or otherwise related to the site.

AYES: Mayor O'Malley, Mayor Pro Tem Kerr, Councilmember Cheng,
Councilmember Fenwick and Councilmember Warshawsky
NOES: None
ABSENT: None
ABSTAIN: None

City Attorney Mattas recommended that Council consider discussion of their options depending on the District's response or non-response to the letter. Mattas offered that if the District did not respond or if the response provided did not provide a basis supported by statutory provisions for the occupancy, Council could direct staff now on what further legal action to take. He explained if Council were to learn that there was absolute confirmable information that occupancy was eminent, they could direct staff to hand deliver a second letter to the District that reconfirmed the Town's position; direct staff to red tag the facility that it had been occupied without a proper permit; and to seek a temporary restraining order from the court.

Council discussed their legal options. Mattas explained that if they received a response from the District and he believed there was a strong legitimate basis for the lease, Staff would immediately advise the Council and the Mayor could call a Special Meeting to reconsider the issue.

Council concurred that they were taking appropriate action to enforce the Town's zoning ordinance and that any issues that the Charter School had with the School District were separate and their legal questions.

MOTION SECONDED AND CARRIED: Moved by Kerr, seconded by Cheng and passed by the following roll call vote to authorize staff and the City Attorney's office to take legal action to seek an injunction enforcing the Town's zoning ordinances and preventing the occupancy in the event that the District does not respond or responds in manner that does not meet the requirements of the Education Code provisions which would take the project out of the Town's zoning authority.

AYES: Mayor O'Malley, Mayor Pro Tem Kerr, Councilmember Cheng,
Councilmember Fenwick and Councilmember Warshawsky
NOES: None
ABSENT: None
ABSTAIN: None

Mayor Pro Tem Kerr asked if there were any way that the memo that had been prepared for Council and was privileged could be shared with the Charter School. Mattas explained that the Council as a whole holds the attorney-client privilege and they could direct that the memo be released. Mattas advised that this only be done in rare circumstances and added that Council could direct him to discuss his findings with the Charter School attorney.

MOTION SECONDED AND CARRIED: Moved by Fenwick, seconded by Cheng and passed by the following roll call vote to authorize the City Attorney to discuss his findings and research for the legal opinion with the attorney representing the Charter School.

AYES: Mayor O'Malley, Mayor Pro Tem Kerr, Councilmember Cheng,
Councilmember Fenwick and Councilmember Warshawsky
NOES: None
ABSENT: None
ABSTAIN: None

Council thanked the City Attorney for his guidance on this issue.

Council Meeting Recessed at 8:50 pm

Council Meeting Reconvened at 9:00 pm

10. PRESENTATIONS FROM THE FLOOR

Steve Hubbell, Canejo Court, Public Education Committee, requested clarification from Council on Standing Committee Chairperson's authority and duties. It was his opinion that Resolution 70-03 that establishes the Committees does not clearly define the position.

Council requested that he submit his request in writing to the City Attorney for review.

Hubbell suggested that it would be beneficial for Committees to have an annual refresher on meeting rules, procedures and decorum. He noted that the Public Education Committee was newly formed and it would have benefited from this information.

Les Earnest, Dianne Drive, explained that he had hoped the Council would have an item on tonight's agenda for discussion of the legal opinion on the definitions of private and public roads and a response to a letter received from a resident's attorney on the validity of pathway easements. He noted that these issues were crucial to the Pathways Committee hearings and discussions.

Mayor O'Malley clarified that this item will be discussed as agenda item 9.1.

Frank Lloyd, Brendel Drive, requested that the multipurpose room doors be adjusted to reduce the noise from opening and closing during the meeting. Tony Vierra, TBI, volunteered to investigate and resolve the issue.

11. PUBLIC HEARINGS

11.1 Introduction of an Ordinance Adding Article 5 to Chapter 3 of the Los Altos Hills Municipal Code Pertaining to Roadway Impact Fees

City Manager Maureen Cassingham introduced this item to Council. She explained that during the budget hearing on June 16, 2004, the City Council had supported the staff recommendation to proceed with a roadway impact fee study. The purpose of the study was to analyze, quantify and recover the cost of road damage caused by construction vehicles and refuse trucks. Staff, after reviewing bids for the study from consulting firms, recommended the firm of Matrix Consulting Group to Council and the study was subsequently awarded to Matrix.

At the meeting of August 19, 2004, Council considered and accepted Matrix's recommendations from the study that included: implementation of a town-wide roadway impact fee; development of an ongoing program to collect average daily traffic counts with respect to local and collector streets; increase in current annual funding for street capital improvements from \$500,000 to \$800,000; and recovery of roadway maintenance and construction costs from construction vehicles and refuse trucks.

Cassingham explained that before Council for their consideration was the ordinance to authorize the Town to establish and set by resolution the rate of roadway impact fees. The fee would be imposed on construction vehicles by an assessment on building permits and on refuse vehicles by means of a fee charged to Los Altos Garbage Company, which would be passed on to customers. The study had determined that based on their respective responsibility for roadway deterioration, construction vehicles should contribute 21% of street repair and maintenance and refuse vehicles should contribute 10%. Cassingham noted that the fee would be adjusted annually by the changes in the Construction Cost Index and traffic counts would be monitored to add additional data to support the fee structure. The fees would be implemented when the ordinance, if adopted, becomes effective November 6, 2004.

Gary Goelitz, Matrix Consulting Group, addressed Council and noted that he was available to answer questions. He explained that there was extensive data to support the damage contributable to the construction and refuse vehicles. Goelitz noted that building projects of \$10,000 or less would be exempt from the fee. He reviewed the study findings with Council.

OPENED PUBLIC HEARING

Frank Lloyd, Finance and Investment Committee, requested clarification on the method of implementing the fee on building permits.

Goelitz explained that it would be based on the valuation of the project.

Craig Jones, Finance and Investment Committee, offered that the Finance and Investment Committee had embraced the concept of the roadway impact fee that would be directly related to the damage caused to the Town's streets by construction and refuse vehicles. He noted that the fee related to use by the trucks was fair and appropriate.

Peter Evans, La Loma Drive, questioned if the fee could be based on the percentage of excavation at a project and possibly be evaluated from project to project.

Jill Jensen, Purissima Road, noted that construction vehicles for a project near her residence have caused breaks in the road and questioned whether this fee will cover damage.

Planning Director Cahill explained that the property owner would be directly responsible for the road repairs to the satisfaction of the Town. The fee would cover the maintenance on the road system.

Jim Abraham, Viscaino Road, supported the idea of having the fee used for additional repairs that are necessitated by construction vehicles including sewer repairs. He suggested that the fee be based on size of project excavation and concrete pour.

CLOSED PUBLIC HEARING

Council discussion ensued. It was noted that Council had discussed and considered the roadway impact study at their last meeting and agreed that it was a fair and appropriate charge with a direct correlation to the vehicles that had caused the damage to the roads. The fees will be deposited into a specific fund that will only be used for road improvements.

MOTION SECONDED AND CARRIED: Moved by Cheng, seconded by Warshawsky and passed unanimously to waive reading and introduce the ordinance adding Article 5, "Roadway Impact Fee Fund" to Chapter 3 of Title 3 to the Municipal Code and to authorize the Town to establish and set the rate of roadway impact fees.

- 11.2 Request for Use of Amplified Sound for Walkathon Fundraiser from
8:30AM – 4:00PM on Saturday, October 16, 2004 at the Los Altos Hills

Town Parks and Recreation Facility (Little League Fields) at 27500
Purissima Road – Event Sponsor: Bullis Charter School

Planning Director Cahill explained that Council had approved the Conditional Use Permit to operate parks and recreation facilities at 27500 Purissima Road on April 15, 2004. Pursuant to Condition #4 of the permit, anyone requesting the use of outdoor sound amplification at the facility is required to receive City Council approval at a publicly noticed hearing. The applicant, Bullis Charter School-represented by Kristina Johnson, is requesting use of outdoor sound amplification for a Walkathon benefit for the school on October 16, 2004.

Kristina Johnson, applicant, explained that they were not purposing to use the Little League's amplification system but a privately owned PA system to play music on the fields during the entire event from 8:30 am to 4:00 pm.

OPENED PUBLIC HEARING
CLOSED PUBLIC HEARING

Following a brief discussion, Council concurred that they supported the request.

MOTION SECONDED AND CARRIED: Moved by Warshawsky, seconded by Kerr and passed unanimously to approve the request for use of outdoor sound amplification for the Bullis Charter School Walkathon on October 16, 2004 at the Los Altos Hills Parks and Recreation facility (Little League Fields) at 27500 Purissima Road.

- 11.3 Request for Extension of the Expiration Date of a Site Development Permit for a Second Story Addition, Detached Garage, and Remodel; Lands of Richardson and Wilson; 11950 Rhus Ridge Road; File# 158-99-ZP-SD-GD

Planning Director Cahill introduced this item to Council. He explained that Council had before them a request for a one-year extension of the site development permit. Cahill noted that pursuant to the Municipal Code, requests for permit extensions made after the expiration of a site development or zoning permit must be reviewed by Council. The original project approval was made by the Planning Commission in 1999. The Planning Department had granted subsequent extensions to the site development permit on October 16, 2000, September 25, 2001 and October 15, 2003. The permit expired on October 27, 2003. Cahill noted that there had been no changes made to the Town's codes or policies that would be applicable to the project.

Cahill stated that if Council approves the extension, staff is recommending a condition of approval requiring the applicant to obtain a building permit and begin construction of the project within the next twelve months.

Peter Richardson, applicant, addressed Council. He was available to answer Council questions and noted that his architect was also available for questions.

OPENED PUBLIC HEARING
CLOSED PUBLIC HEARING

MOTION SECONDED AND CARRIED: Moved by Warshawsky, seconded by Cheng and passed unanimously to approve the request for a one-year extension of the site development permit for a second story addition, detached garage and interior remodel at 11950 Rhus Ridge Road.

11.4 Approval of Appropriations for Citizens' Option for Public Safety Funds (COPS)

City Manager Cassingham introduced this item to Council. She explained that by State law, the City Council is required to conduct a public hearing and appropriate COPS funding in September of each year in which the funding is available. COPS funding has enabled the Town to hire a public Safety Officer who is charged with code enforcement and emergency preparedness duties. Cassingham noted that the approved Operating and Capital Improvement Program Budget for Fiscal Year 2004-2005 included the appropriations for the COPS fund. Each year the Town is allocated \$100,000 and appropriations for the Fund includes \$77,957 for salary and benefits for the Public Safety Officer and \$11,205 for supplies, computer equipment, meetings and vehicle maintenance for code enforcement and emergency preparedness activities.

OPENED PUBLIC HEARING
CLOSED PUBLIC HEARING

MOTION SECONDED AND CARRIED: Moved by Kerr, seconded by Warshawsky and passed unanimously to adopt and approve Resolution # 61-04 approving appropriations for the Citizen's Option for Public Safety (COPS) Fund for the fiscal year 2004-2005.

11.5 Lands of Creative Center of Los Altos (dba Pinewood School), 13930 Campo Vista Lane; Appeal of an Abatement Action Pursuant to Municipal Code Section 6-501.(k)

Planning Director Carl Cahill introduced this item to Council. He explained that a public nuisance abatement order had been issued by the Town on the property due to the unsightliness of the existing structure. Since the issuance of the order, the new property owner has taken steps to improve the appearance of the property by removing debris and clearing the weeds. Cahill noted that staff is requesting continuance of Council action in light of these efforts by the applicant and recent correspondence from the current property owner's attorney. Staff would like the opportunity to clarify the correspondence. As an illustration, Cahill noted that the letter suggested that the property owner would remove the existing plywood on the structure. Staff questions the scope of the plywood removal, noting that if just the plywood is being removed from the structure, it may not comply with the intent of the abatement order. Cahill noted that there are also issues regarding the removal and disposal of fill on the property.

City Attorney Steve Mattas noted that the letter from the property owners attorney speaks to removing plywood from the structure and maintaining only the steel frame of the structure. Mattas concurred with Cahill that it would be appropriate for staff to meet with

Pinewood representatives to understand the scope of the proposals identified in the letter before Council takes final action.

Scott Riches, President Pinewood School, thanked Planning Director Cahill for the objective staff report he had prepared for this item. He summarized the letter from his attorney dated September 15, 2004. He noted that the reference in the letter to plywood includes the timbers. Riches explained that he is anxious to remove the steel frame of the structure and offered that he is willing to do so when the existing litigation is resolved. He expressed his commitment to keep staff informed of the progress they make on correcting the code violations and discussions with the previous owners.

Mayor Pro Tem Kerr clarified that the only issue before Council was the nuisance abatement order. He wanted assurance from Riches that his offer to proceed with resolving the order was separate from any development plan.

Riches agreed.

OPENED PUBLIC HEARING

Sue Sullivan, Campo Vista Lane, explained that she wanted assurance that the agreement to remove the plywood, structure and fill was completely independent of development on the property. These are unrelated issues. She reiterated that the neighbors are closely monitoring the property.

CLOSED PUBLIC HEARING

City Attorney Steve Mattas recommended Council continue final consideration of this item to the next City Council meeting. The City Attorney and Planning Director will meet with the representatives for Pinewood and if they are able to identify the appropriate response from Pinewood that would satisfy the purpose of the abatement order, staff would move forward with that. If not, the matter would be returned to Council.

Following a brief discussion, Council concurred that they would allow staff time to attempt to resolve the issue administratively.

MOTION SECONDED AND CARRIED: Moved by Fenwick, seconded by Cheng and passed unanimously to continue discussion of the appeal of the Notice of Nuisance Abatement regarding 13902 Campo Vista Lane until the October 7, 2004 City Council meeting.

MOTION SECONDED AND CARRIED: Moved by Fenwick, seconded by Warshawsky and passed unanimously to adjourn to the Closed Session at 10:35 pm

12. CLOSED SESSION

CLOSED SESSION: CONFERENCE WITH LEGAL COUNSEL – EXISTING
LITIGATION: Government Code Section 54956.9(a): Campbell and Ligeti v. Town of
Los Altos Hills

The City Council reconvened to the Regular City Council meeting at 10:48 pm.
No action was taken.

13. ADJOURNMENT

There being no further business, the Regular City Council Meeting was adjourned at 10:49 pm.

Respectfully submitted,

Karen Jost
City Clerk

The City Council meeting minutes were approved as presented at the October 7, 2004 Regular
City Council Meeting.